

CHAPTER 4.—DEPARTMENT OF DEFENSE

Sec.

131. Executive department.
132. Seal.
133. Secretary of Defense: appointment; powers and duties; delegation by.
134. Deputy Secretaries of Defense: appointment; powers and duties; precedence.
135. Director of Defense Research and Engineering: appointment; powers and duties; precedence.
136. Assistant Secretaries of Defense: appointment; powers and duties; precedence.
137. General Counsel: appointment; powers and duties.
138. Secretary of Defense: Annual authorization of appropriations for armed forces.
139. Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports.

Historical Note

1973 Amendment. Pub.L. 93-155, Title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 612, added items 138 and 139.

1972 Amendment. Pub.L. 92-506, § 4(3), Oct. 27, 1972, 86 Stat. 1318, substituted "Deputy Secretaries" for "Deputy Secretary" in item 134.

§ 131. Executive department

The Department of Defense is an executive department of the United States.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 517.

Historical Note

Savings and Severability Provisions. Section 306 of Pub.L. 87-651 provided that:

"(a) Laws becoming effective after January 9, 1962, that are inconsistent with this Act [enacting sections 121 to 126, 131 to 137, 687, 718, 1168, 1580, 2203 to 2211, 2358, 2634, 2670, 2680, 2681, 2734a, 2734b, 3010 and 8010 of this title, amending sections 141, 280, 674, 802, 1006, 1163, 1201 to 1203, 1211, 1218, 1219, 1334, 1405, 1553, 1554, 2276, 2633, 2672, 2674, 3012, 3034, 3853, 4337, 4621, 5011, 5031, 5081, 5082, 5201, 6033, 6148, 6954, 7230, 8012, 8034, 8352, 8991, 9337 and 9621 of this title, and section 454 of Title 50, repealing sections 1220, 4023, 4748, 6157, 9023 and 9748 of this title, sections 171, 171a, 171a-1, 171c, 171c-2, 171d, 171m-1, 171n (partial), 171z-1, 172, 172b to 172h and 174d of Title 5, section 471a of

Title 14, sections 224i-2 to 224i-5 of Title 31, and section 1016 of Title 50, and enacting provisions set out as notes under this section and sections 125, 637, 1334 and 5034 of this title] shall be considered as superseding it to the extent of the inconsistency.

"(b) References made by other laws, regulations and orders to the laws shall be considered to be made to the corresponding provisions of this Act.

"(c) Actions taken under the replaced law shall be considered to have been taken under the corresponding provisions of this Act.

"(d) The enactment of this Act, except section 108 [amending section 1334 of this title], does not increase or decrease the pay or allowances, including retired and retainer pay, of any person."

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Defense Manpower L. 93-155, Title VII, 1973, 87 Stat. 611, p. "Sec. 701 [Defense sion; establishment striction]. (a) There ed a commission to fense Manpower Cor in this title referred sion').

"(b) The Commis posed of seven meml lows:

"(1) One member the majority leade

"(2) One member the minority leade

"(3) One member the majority leade Representatives;

"(4) One member the minority leade Representatives; a

"(5) Three memb by the President.

No person may be ap mission who is a clu ployee of the Feder no person may be ap ing on active duty wi of the United States.

"(c) The Commis Chairman and Vic among its members.

"(d) Four members shall constitute a qu in the Commission powers, but shall be manner in which th ment was made.

"Sec. 702 [Duties manpower requireme vestigation]. It shall Commission to condu study and investigat manpower requireme ment of Defense on b long-term basis with ing what the manpow currently and will lik ten years, and how more effectively utili ment of Defense. In study and investigati shall give special co

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"(2) whether the cluding fringe benef equitable at all leve

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Notes of Decisions

1. Historical

The Department of War [now Department of Defense] was created, with "a principal officer therein, to be called the Secretary for the Department of War [now Secretary of Defense]", by Act Aug. 7, 1789, c. 7, 1 Stat. 49. In re Hennen, 1839, 38 U.S. 230, 259, 13 Pet. 230, 259, 10 L.Ed. 138. See, also, 1855, 7 Op.Atty.Gen. 453, 461.

§ 132. Seal

The Secretary of Defense shall have a seal for the Department of Defense. The design of the seal is subject to approval by the President. Judicial notice shall be taken of the seal.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 517.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 87-651, see 1962 U.S.Code Cong. and Adm.News, p. 2456.

Library References

Armed Services

C.J.S. Army and Navy §§ 1, 4 et seq.

§ 133. Secretary of Defense: appointment; powers and duties; delegation by

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 401 of title 50, he has authority, direction, and control over the Department of Defense.

(c) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with—

(1) a report from each military department on the expenditures, work, and accomplishments of that department;

(2) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under section 125 of this title;

(3) a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a re-

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view of the effectiveness of chapters 51, 337, 361, 363, 549, 573, 837, 861, and 863 of this title, as far as they apply to reserve officers; and

(4) such recommendations as he considers appropriate.

(d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 517.

Historical Note

Delegation of Functions. Functions of the President under various sections delegated to the Secretary of Defense, see Ex.Ord.No. 10621, July 1, 1955, 20 F.R. 4759, as amended by Ex.Ord.No. 11294, Aug. 4, 1966, 31 F.R. 10601; Ex.Ord.No. 10661, Feb. 27, 1956, 21 F.R. 1315; Ex.Ord.No. 11390, Jan. 22, 1963, 33 F.R. 841, all set out as notes under section 301 of Title 3, The President.

paredness functions to the Secretary of Defense, see Parts 1, 4, and 30 of Ex.Ord.No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of the Appendix to Title 50, War and National Defense.

Legislative History. For legislative history and purpose of Pub.L. 87-651, see 1962 U.S.Code Cong. and Adm.News, p. 2456.

Emergency Preparedness Functions. For assignment of certain emergency pre-

Cross References

Annual rate of basic compensation of Secretary, see section 5312 of Title 5, Government Organization and Employees.
National Security Agency employment, delegation of authority for terminating, notwithstanding subsec. (d) of this section, see section 833 of Title 50, War and National Defense.
Reports to Congressional Committees, policies and procedures on recall to active duty of Ready Reserve members, see section 673 of this title.

Library References

Armed Services ↪4.

C.J.S. Army and Navy §§ 1, 4 et seq.

Code of Federal Regulations

Acceptance, designation and receipt of service of process, see 32 CFR 257.1 et seq.
Cost information reports, applicability and scope, see 32 CFR 250.1 et seq.
Equal Opportunity Program, policy of assuring compliance, see 32 CFR 191.1 et seq.
Foreign tax relief program, policy and scope, see 32 CFR 211.1 et seq.
Honorary awards to private citizens and organizations, policy and scope establishing, see 32 CFR 244.1 et seq.
Overseas Dependents School System, policy for organization, operation and administration, see 32 CFR 69.1 et seq.
Standards of conduct for military and civilian personnel, Navy Department, see 32 CFR 721.1 et seq.
Subscription service of directives, instructions and indexes to the public, see 32 CFR 289.1 et seq.
Trial by foreign courts, treatment in foreign prisons of U. S. military personnel, etc., policy and procedures, see 32 CFR 151.1 et seq.

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conscientious objector was a very close one, it could not be said that reserve member was not prejudiced by failure to follow the then prescribed procedure by having his commanding officer act on application, and it could only be speculated as to what basis for action was, case would be sent back to Department of Navy with directions for processing of application in accordance with new procedure in Department of Defense directive. *Id.*

Determination whether it is practicable and equitable under facts and circumstances of case to discharge conscientious objector, once enlisted or legally inducted into armed forces, is ultimately vested by this section, directive and regulation within discretion of the military itself. *U. S. ex rel. O'Hare v. Eichstaedt*, D.C. Cal.1967, 285 F.Supp. 476.

8. Industrial security clearance

Former section 171 et seq., of Title 5, and the Armed Service Procurement Act, section 2301 et seq., of this title together with section 798 of Title 18 making it a crime to communicate intelligence information to unauthorized persons and section 783 of Title 50 making it a crime for officer or employee of United States to communicate classified information to agents of foreign governments or Communist organizations do not authorize

Department of Defense to create industrial security clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on basis of fact determinations concerning their fitness for clearance made in proceedings in which they are denied traditional procedural safeguards of confrontation and cross-examination. *Greene v. McElroy*, App.D.C.1959, 79 S.Ct. 1400, 360 U.S. 474, 3 L.Ed.2d 1377.

9. Suits by or against Secretary

Where, reserve officer brought proceeding in federal district court against Secretary of War [now Secretary of Defense] claiming that certain of his Army records had been illegally altered with result that he was relieved from active duty, and Secretary of the Army was substituted as defendant after that officer replaced the former under the National Security Act of 1947, former sections 181-1 to 181-5 of Title 5, and, pending the litigation, officer's records were transferred to the Department of the Air Force, former section 171 of Title 5, providing that in case of transfer, suit may be maintained by or against successor officer, only if motion is filed in court within 12 months after transfer takes effect applied. *Updegraff v. Pace*, 1951, 188 F.2d 646, 88 U.S.App.D.C. 202.

§ 134. Deputy Secretaries of Defense: appointment; powers and duties; precedence

(a) There are two Deputy Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as a Deputy Secretary of Defense within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretaries, in the order of precedence, designated by the President shall act for, and exercise the powers of, the Secretary when the Secretary is disabled or there is no Secretary of Defense.

(c) The Deputy Secretaries take precedence in the Department of Defense immediately after the Secretary.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 518, and amended Pub.L. 92-596, § 4(1), Oct. 27, 1972, 86 Stat. 1318.

Historical Note

1972 Amendment. Catchline. Pub.L. 92-596 substituted "Deputy Secretaries" for "Deputy Secretary".

Subsec. (a). Pub.L. 92-596 substituted "There are two Deputy Secretaries of Defense" for "There is a Deputy Secretary of Defense".

Subsec. (b). Pub.L. 92-596 provided for the exercise of powers and duties consequent to the creation of a second Deputy Secretary.

Subsec. (c). Pub.L. 92-596 substituted "The Deputy Secretaries take" for "The Deputy Secretary takes".

Order of Succession. Order of succession in the event of the death, disability, or absence of the Secretary of Defense, see Ex.Ord.No.10820, May 18, 1959, 24 F.R. 4045, set out as a note under section 3347 of Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 87-651, see 1962 U.S.Code Cong. and Adm.News, p. 2456. See, also Pub.L. 92-596, 1972 U.S. Code Cong. and Adm.News, p. 4938.

Library References

Armed Services 4.

C.J.S. Army and Navy §§ 1, 4 et seq.

§ 135. Director of Defense Research and Engineering: appointment; powers and duties; precedence

(a) There is a Director of Defense Research and Engineering, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Director performs such duties relating to research and engineering as the Secretary of Defense may prescribe, including—

(1) being the principal adviser to the Secretary on scientific and technical matters;

(2) supervising all research and engineering activities in the Department of Defense; and

(3) directing, controlling, assigning, and reassigning research and engineering activities that the Secretary considers need centralized management.

(c) The Director takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretaries of Defense, and the Secretaries of the military departments.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 518, and amended Pub.L. 92-596, § 4(2), Oct. 27, 1972, 86 Stat. 1318.

Historical Note

1972 Amendment. Subsec. (c). Pub.L. 92-596 substituted "Deputy Secretaries" for "Deputy Secretary".

Compensation of Director. The last sentence of section 203(b)(1) of Act July 26, 1947, c. 343, Title II, as added Aug. 6, 1953, Pub.L. 85-599, § 9(a), 72 Stat. 520.

which prescribed the compensation of the Director of Defense Research and Engineering, formerly set out as a note under this section, was repealed by Pub.L. 88-426, Title II, § 305(23), Aug. 14, 1964, 78 Stat. 425, and is now covered by section 5314 of Title 5, Government Organization and Employees.

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Emergency Fund for Research, De-
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Stat. 128, provided that: "No funds may
be appropriated after June 30, 1966, to
or for the use of any armed force of the
United States for use as an emergency
fund for research, development, test, and
evaluation, or procurement or production

related thereto unless the appropriation
of such funds has been authorized by
legislation enacted after that date."

Legislative History. For legislative
history and purpose of Pub.L. 87-651, see
1962 U.S.Code Cong. and Adm.News, p.
2456. See, also, Pub.L. 92-596, 1972 U.S.
Code Cong. and Adm.News, p. 4938.

§ 136. Assistant Secretaries of Defense: appointment; pow-
ers and duties; precedence

(a) There are nine Assistant Secretaries of Defense, appointed
from civilian life by the President, by and with the advice and con-
sent of the Senate.

(b) The Assistant Secretaries shall perform such duties and exer-
cise such powers as the Secretary of Defense may prescribe. One
of the Assistant Secretaries shall be the Assistant Secretary of De-
fense for Health Affairs. He shall have as his principal duty the
overall supervision of health affairs of the Department of Defense.
One of the Assistant Secretaries shall be the Assistant Secretary of
Defense for Manpower and Reserve Affairs. He shall have as his
principal duty the overall supervision of manpower and reserve
component affairs of the Department of Defense. In addition, one
of the Assistant Secretaries shall be the Comptroller of the Depart-
ment of Defense and shall, subject to the authority, direction, and
control of the Secretary—

(1) advise and assist the Secretary in performing such budg-
etary and fiscal functions and duties, and in exercising such
budgetary and fiscal powers, as are needed to carry out the
powers of the Secretary;

(2) supervise and direct the preparation of budget estimates
of the Department of Defense;

(3) establish and supervise the execution of principles,
policies, and procedures to be followed in connection with or-
ganizational and administrative matters relating to—

(A) the preparation and execution of budgets;

(B) fiscal, cost, operating, and capital property account-
ing;

(C) progress and statistical reporting; and

(D) internal audit;

(4) establish and supervise the execution of policies and
procedures relating to the expenditure and collection of funds
administered by the Department of Defense; and

(5) establish uniform terminologies, classifications, and pro-
cedures concerning matters covered by clauses (1)-(4).

(c) Except as otherwise specifically provided by law, an Assistant Secretary may not issue an order to a military department unless—

(1) the Secretary of Defense has specifically delegated that authority to him in writing; and

(2) the order is issued through the Secretary of the military department concerned, or his designee.

(d) In carrying out subsection (c) and sections 3010, 3012(b) (last two sentences), 5011 (first two sentences), 5031(a) (last two sentences), 8010, and 8012(b) (last two sentences) of this title, the Secretary of each military department, his civilian assistants, and members of the armed forces under the jurisdiction of his department shall cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(e) The Assistant Secretaries take precedence in the Department of Defense after the Secretary, the Deputy Secretaries of Defense, the Secretaries of the military departments and the Director of Defense Research and Engineering.

(f) Within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs there shall be a Deputy Assistant Secretary of Defense for Reserve Affairs who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. Subject to the supervision and control of the Assistant Secretary of Defense for Manpower and Reserve Affairs, the Deputy Assistant Secretary shall be responsible for all matters relating to reserve affairs within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs.

Added Pub.L. 87-651, Title II, § 202, Sept. 7, 1962, 76 Stat. 518, and amended Pub.L. 90-168, § 2(1), (2), Dec. 1, 1967, 81 Stat. 521; Pub.L. 91-121, Title IV, § 404(a), Nov. 19, 1969, 83 Stat. 207; Pub.L. 92-215, § 1, Dec. 22, 1971, 85 Stat. 777; Pub.L. 92-596, § 4(2), Oct. 27, 1972, 86 Stat. 1318.

Historical Note

1972 Amendment. Subsec. (c). Pub.L. 92-596 substituted "Deputy Secretaries" for "Deputy Secretary".

1971 Amendment. Subsec. (a). Pub.L. 92-215 increased the number of Assistant Secretaries of Defense from eight to nine.

1969 Amendment. Subsec. (a). Pub.L. 91-121, § 404(a)(1), increased the number of Assistant Secretaries of Defense from seven to eight.

Subsec. (b). Pub.L. 91-121, § 404(a)(2), provided for an Assistant Secretary of

Defense for Health Affairs having as his principal duty the overall supervision of health affairs of the Department of Defense.

1967 Amendment. Subsec. (b). Pub.L. 90-168, § 2(1), added provisions for an Assistant Secretary of Defense for Manpower and Reserve Affairs with the principal duty of overall supervision of manpower and reserve component affairs of the Department of Defense.

Subsec. (f). Pub.L. 90-168, § 2(2), added subsec. (f).

Effective Date of Section 7 of Pub.L. 90-168. "The provisions of this section and sections 269, 270, 511, 3013, 5011, 5012, 5013, 5014, 5015, 5016, 5017, 5018, 5019, 5020, 5021, 5022, 5023, 5024, 5025, 5026, 5027, 5028, 5029, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5040, 5041, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5053, 5054, 5055, 5056, 5057, 5058, 5059, 5060, 5061, 5062, 5063, 5064, 5065, 5066, 5067, 5068, 5069, 5070, 5071, 5072, 5073, 5074, 5075, 5076, 5077, 5078, 5079, 5080, 5081, 5082, 5083, 5084, 5085, 5086, 5087, 5088, 5089, 5090, 5091, 5092, 5093, 5094, 5095, 5096, 5097, 5098, 5099, 5100, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112, 5113, 5114, 5115, 5116, 5117, 5118, 5119, 5120, 5121, 5122, 5123, 5124, 5125, 5126, 5127, 5128, 5129, 5130, 5131, 5132, 5133, 5134, 5135, 5136, 5137, 5138, 5139, 5140, 5141, 5142, 5143, 5144, 5145, 5146, 5147, 5148, 5149, 5150, 5151, 5152, 5153, 5154, 5155, 5156, 5157, 5158, 5159, 5160, 5161, 5162, 5163, 5164, 5165, 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7. What relative roles should civilians and the military have in producing intelligence?

Both civilians and the military have important roles in the intelligence process. Generally speaking, the military has special intelligence requirements which are related to its combat mission. This means that the military must have its own intelligence capability with respect to both collection and analysis of information. Military intelligence, therefore, can be viewed as supplementing the more broad and strategic efforts of the civilian agencies. Civilians and the military have relatively independent roles in the field though there is coordination as appropriate to avoid duplication and assure full coverage. The coordination in the production process allows the civilian agencies to take exception to conclusions by the military in national estimates and the military can take similar exceptions to conclusions made by the civilian agencies. This process allows the policy makers to make their decisions based on national estimates which fully cover all sides of the issues involved. It is the best assurance that estimates are not slanted or biased either in favor of the military or the civilian agencies. The CIA is institutionally insulated from such bias because it has no policy role.

8. Should there be more than one statutory deputy to the DCI? What should their respective roles be? Who should act for the DCI in his absence? What should be the civilian-military make-up of the DCI and his principal deputies?

Yes. I think there should be two statutory deputies. As you know, the DCI wears two hats. He is the executive head of the CIA, and, as the principal foreign intelligence officer of the Government, he also has certain general administrative responsibilities with respect to the entire Intelligence Community. The Director's duties in administering the Intelligence Community, handling relations with other components of the Government, and passing on broad questions of policy leave him little time for day-to-day supervision of the Agency. I think the Director needs a deputy to assist him in each of his two roles. This was one of the recommendations of the Rockefeller Commission Report. The two deputies concept is also reflected in the recently issued Executive Order 11905, which directs the DCI to delegate the day-to-day operation of the CIA to the Deputy Director and which creates the position of "Deputy to the Director of Central Intelligence for the Intelligence Community" to assist the DCI in his supervision of the Intelligence Community. I think this latter administratively-created position should be upgraded to a statutory one, because I think it is important that both deputies be politically responsible officials appointed by the President and confirmed by the Senate.

As to who should act for the DCI in his absence, I think that generally the Deputy for the Agency would continue handling Agency matters and the Deputy for the Intelligence Community could deal with Community matters. Responsibility in a few "gray" areas could be apportioned by internal directive.

Finally, I think the question of the civilian-military make-up is largely a policy question for Congress to decide, although I think that it would be generally appropriate for a military man to assist the DCI in Community matters while continuing the present arrangement of having at least one civilian in the two top Agency positions.

9. What changes need to be made in the National Security Act of 1947?

The CIA and intelligence community have somewhat outgrown the National Security Act. I believe the Act should be amended to reflect the DCI's dominant role for the intelligence community as a whole. Additionally, the prohibitions on CIA are worded in very broad and vague terms; some of these can be inconsistent with the positive responsibilities levied by the Act, such as the DCI's responsibility to protect intelligence sources and methods. I believe these inconsistencies should be clarified. I believe Senator Stennis' bill, introduced in the 93rd Congress, does this to a great extent.

10. What are the strengths and weaknesses of E. O. 11905? What role does it create, beyond the National Security Act, for the DDCI?

I think it is too early to detect weaknesses in the Order. Certainly none have surfaced yet. On the other hand, its strengths are obvious. For the first time, the respective authorities and responsibilities of the various intelligence agencies and departments have been delineated and clarified; provision has been made for strong central supervision and direction of intelligence activities by the DCI; strong internal and external oversight mechanisms have been established to assure that intelligence activities are proper and lawful; and detailed restrictions on intelligence activities have been spelled out in order to safeguard the civil liberties of the American people.

The Director's duties in administering the intelligence community, handling relations with other components of the Government, and passing on broad questions of policy leave him little time for day-to-day supervision of the Agency. Therefore, Executive Order 11905 directs the DCI to delegate the day-to-day operation of the CIA to the Deputy Director for Central Intelligence.